

RemarksIntroduction

Claims 1 and 5-9 are pending.

Applicant has amended claim 1 to recite features of the invention.

Claim Rejections

The Examiner rejected claims 1, 5, 7, and 8 under 35 U.S.C. § 102(b) as being anticipated by Burns, previously cited, and rejected claims 6 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Burns. The rejections are respectfully traversed.

Claim 1 recites an assembly with the following features:

- an elongate tubular housing having opposed first and second ends
- a solid partition positioned within said housing between the first and second ends, the housing defining a volume
- the second end comprising a bottom end below the partition, the bottom end comprising a rounded bottom having an opening therein

Burns does not disclose: a bottom end below a solid partition, with the bottom end comprising a rounded bottom with an opening therein. In Burns, an annular skirt 37 exists below the partition, and this annular skirt does not have a rounded bottom.

For these reasons, Burns does not anticipate claim 1.

Nor would Burns render claim 1 obvious.

If a user of the Burns collection container desired compatibility with diagnostic equipment, Burns provides its own solution – one or more extensions (90) placed into the annular skirt (37). (See Figs. 7 and 8, and Col. 5, lines 13-24.) Thus, the only motivation the Examiner has previously presented for changing the Burns design, i.e., compatibility, is already addressed within Burns itself. Thus, one skilled in the art, reading Burns, would have no apparent need to modify the Burns container for diagnostic compatibility.

In addition, Burns discloses that its annular skirt has 2 specific functions – allowing the assembly to be placed upright on a flat surface (Col. 3, lines 50-52), and being compatible with the container cap, such that the cap can be retained at the bottom of the Burns assembly during sample collection (Col. 5, lines 7-12). Modifying the

Burns container in the manner necessary to reach Appellant's claimed invention goes against these explicit functions of the Burns container. One would not do so, particularly where Burns provides its own solution to the issue of compatibility with equipment.

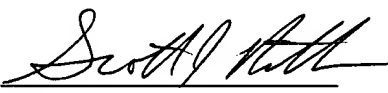
Moreover, such a modification of the Burns container would in fact destroy these 2 functionalities, since a rounded bottom would not appear to allow one to place the container on a flat surface, nor would the rounded bottom retain the cap during use. It is well-accepted that an obviousness rejection based on modifying or combining references in a manner that destroys the references' intended function cannot stand. See, e.g., In re Gordon, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984).

In view of the amendments and remarks above, applicants respectfully request reconsideration of the application, and allowance of all claims.

If there are any additional fees related to this Amendment, such fees should be charged to Deposit Account No. 02-1666.

Respectfully submitted,

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Marked-up Version of the Claims:

1. (four times amended) A one piece collection container assembly comprising:  
an elongate tubular housing having opposed first and second ends ~~and a~~  
~~cylindrical wall therebetween defining a tubular interior;~~ and  
a solid partition positioned within said housing between said first and second  
ends;  
said housing defining a volume for specimen collection therein between said first  
end and said partition;  
said second end comprising a false bottom end below said partition, said bottom  
end comprising a rounded ~~open~~ bottom end having an opening therein ~~extending from an~~  
~~arcuate shoulder.~~

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